

SECOND DIVISION

[G.R. No. 145503, August 20, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JULIE BALLESTEROL Y VALDEZ, ALIAS "BONGBONG," ALIAS
"JOLLY," ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision,^[1] dated August 22, 2000, of the Regional Trial Court, Branch 46, Urdaneta City, finding accused-appellant Julie Ballesterol y Valdez, alias "Bongbong" and "Jolly," guilty of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the offended party, Marlyn Aleguas,^[2] in the amount of P50,000.00 as moral damages and P20,000.00 as exemplary damages.

The facts are as follows:

In an information, docketed as Criminal Case No. V-10613 in the Regional Trial Court, Branch 46, Urdaneta City, accused-appellant was charged with rape, allegedly committed as follows:

That sometime in January 2000 at Brgy. Alipangpang, Pozorrubio, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, through force, threat, and intimidation, did then and there, wilfully, unlawfully, and feloniously have sexual intercourse with MARLYN AL[E]GUAS, a minor, 7 years of age, against her will, to her damage and prejudice.

CONTRARY to Art. 266-A, Revised Penal Code, as amended by Rep. Act Nos. 7659 and 8353.^[3]

Upon arraignment, accused-appellant entered a plea of not guilty, whereupon trial was held.

The victim, Marlyn Aleguas, testified that she was a seven-year old^[4] Grade 1 student at the time of the crime. She and accused-appellant, whom she called "Uncle," were neighbors in Alipangpang, Pozorrubio, Pangasinan. Sometime in the last week of January 2000, while she was alone at home from school, accused-appellant went to her house. Marlyn said he removed her panty and made her lie down on the bed in a prone position. He then proceeded to remove his short pants and inserted his penis first into her vagina and later into her anus.^[5]

Marlyn's father, Daniel Aleguas, a security guard working in San Fernando, La Union, testified that he was told by his wife, Mary Grace, that their daughter's private parts appeared to be infected. Upon his advice, Mary Grace took Marlyn to a certain Dr. Tomeldan, who confirmed that Marlyn's private parts had indeed been infected.

Another doctor, Dr. Francisco Llamas, also confirmed the finding and said that a man might have caused Marlyn's infection. Daniel Aleguas said he confronted Marlyn and asked her who infected her. It was then that he learned what had happened. Two days later, Daniel said, he decided to report the matter to the police. He and his daughter Marlyn gave sworn statements (Exhs. B and C)^[6] to SPO3 Maximiano Balelo.^[7]

Dr. Francisco Llamas, Chief of the Pozorrubio Community Hospital, who examined Marlyn on February 15, 2001, prepared a medico-legal report (Exh. A),^[8] the pertinent portions of which states:

FINDINGS:

History (narrated by mother): Mother discovered last Sunday, Feb. 13, 2000, that her daughter (victim) has plenty of secretions in her external genitalia described as puslike staining her underwear. Her daughter (victim) admitted that when she was left alone at home the assailant came to the house and sexually abused her. This happened around the end of January 2000 at about 9:00 to 10:00 AM.

PERTINENT PHYSICAL EXAMINATION:

- No findings in other parts of the body,
- External genitalia:
 - * Labia majora - slightly swollen,
 - * Labia minora - hyperemic (redness),
 - * Hymen - intact, no laceration,
 - * Purulent materials seen at the external vaginal orifice,
 - * The secretion (purulent material) was sent for laboratory examination.

. . . .

REMARKS: LABORATORY REPORT:

- Negative for spermatozoa; - Bacili - negative
- Epithelial cells + - Gram negative (-)
- Pus cells ++++ intracellular diplococci +
- Cocci ++++^[9]

In addition, Dr. Llamas testified. He said he found diplococci, which cause gonorrhea, in Marlyn's vaginal orifice. The diplococci were "possibly" transmitted to Marlyn through an infected penis, because the diplococci "cannot stay outside the body, they stay in [a] moist environment like [an] erect penis because the erect penis is always moist." For this reason, Dr. Llamas said, it was unlikely that a finger inserted into Marlyn's vagina could have caused the infection.^[10]

Accused-appellant denied the charge against him. He testified that from January 26, 2000 to February 7, 2000, he was in Villegas, another barangay of Pozorrubio, Pangasinan, preparing the hollow blocks for the house of Nicanor Lacupal. According to accused-appellant, Villegas is six to nine kilometers away from Alipangpang where the crime was committed. He claimed that he was with Romeo Aleguas in Villegas. Accused-appellant said that Nicanor Lacupal required him and Romeo Aleguas to live in his (Lacupal's) house to cut the cost of construction. He denied raping Marlyn or that he had gonorrhea. He claimed that the victim's family had a

grudge against him because at one time he refused to give his mother money to lend to the victim's mother.^[11] Nicanor Lacupal, who is Romeo and Daniel Aleguas' brother-in-law and their sister's husband, corroborated accused-appellant's claim that, during the period January 26, 2000 to February 7, 2000, he was in Villegas.^[12]

Dr. Francisco Llamas, who testified for the prosecution, also testified for the defense. He said that on February 18, 2000, he conducted a medical examination of accused-appellant's external genitalia upon the request of accused-appellant's relative. His report of his findings (Exh. 1)^[13] is as follows:

FINDINGS: Pertinent P.E.:

- External genitalia - no discharge, no visible lesion at the urethral orifice.
- Laboratory Exam:
 1. Urinalysis - within normal limits, pus cells of 2-4/high power field is insignificant
 2. Gram's stain (urethral smear) - no gram positive (+) nor gram negative (-) organism seen.

These findings show that the subject is not harboring any sexually transmitted disease.

But to erase any doubt, I suggest that a smear from prostatic fluid be conducted, preferably at the Region I Medical Center, Dagupan City.

. . . .

REMARKS: Gram stain of prostatic secretion done at the RIMC - (Feb. 24, 2000).

Result: No microorganism seen. With this, I believe that the subject is free from any sexually transmitted disease.

A laboratory examination of accused-appellant's prostatic fluid conducted by Dr. Sheldon Steven C. Aquino (Exhs. 2 and 2-A)^[14] also yielded negative results, according to Dr. Llamas.^[15]

The prosecution objected to Exh. 1, the report of Dr. Llamas, on the ground that it was not relevant to Dr. Llamas's previous finding that the victim was suffering from a sexually transmitted disease. It also objected to the report on the examination conducted by Dr. Aquino on the ground that the report was hearsay because Dr. Aquino had not been presented to testify on his findings.^[16]

Nonetheless, the trial court admitted the two exhibits.^[17] On August 31, 2000, it rendered a decision, the dispositive portion of which reads:

WHEREFORE, JUDGMENT is hereby rendered, CONVICTING beyond reasonable doubt accused JULIE BALLESTEROL y VALDES alias "BONGBONG," alias "JOLLY" of the crime of SIMPLE RAPE and the Court sentences him to suffer the penalty of Reclusion Perpetua; Julie Ballesterol is hereby ordered to indemnify Marlyn Aleguas the sum of P50,000.00 as moral damages and P20,000.00 as exemplary damages.

The Branch Clerk of Court of this Court is hereby ordered to prepare the mitimus immediately.

The Jail Warden, Bureau of Jail Management and Penology (BJMP), Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the living person of Julie Ballesterol y Valdez alias "Bongbong," alias "Jolly" to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this Decision.^[18]

The trial court held that accused-appellant's alibi cannot prevail over the "direct, straightforward, and categorical testimony" of the victim Marlyn Aleguas. It further ruled that the lack of laceration on Marlyn's hymen was of no moment because even the mere touching by the male organ of the pudendum of the victim constitutes consummated rape. With respect to the finding that accused-appellant was not suffering from any venereal disease, the trial court held that this did not necessarily mean that he did not rape Marlyn. That Marlyn Aleguas had an infection on her private parts, according to the court, "simply means that there was contact of her genitalia at the time of the examination on February 15, 2000." As for accused-appellant's claim that he was accused of rape because he had refused the victim's mother for money, the trial court ruled that it was not reason enough to make the latter falsely accuse accused-appellant of a crime he did not commit.

Hence this appeal based on the following assignment of error:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.^[19]

Accused-appellant contends that (1) he was found negative for a sexually transmitted disease, i.e., gonorrhea, from which Marlyn was found to be suffering, (2) the medical examination of Marlyn revealed no lacerations of the hymen, (3) at the time of the commission of the crime he was in Barangay Villegas, which is from six to nine kilometers from Barangay Alipangpang where the incident happened and his alibi was corroborated by no less than the victim's uncle, Nicanor Lacupal, and (4) Marlyn's mother Mary Grace harbored a grudge against him because he refused to lend her money.

The Solicitor General argues in his appellee's brief that the finding of Dr. Francisco Llamas that accused-appellant was not suffering from gonorrhea when he examined the latter on February 18, 2000 does not preclude accused-appellant from having the disease when he raped Marlyn two weeks earlier as Dr. Llamas himself testified that it would only take a week to cure gonorrhea. He contends that the presence of a laceration in the victim's vagina is not an essential prerequisite to prove that the victim has been raped. He contends that accused-appellant's alibi is tenuous considering that Villegas, where he supposedly stayed at the time of the commission of the crime, is only several kilometers away from Alipangpang, where the rape took place. He further argues that Mary Grace Aleguas would not expose her daughter to the hardship and shame associated with a prosecution for rape simply for revenge because accused-appellant refused to lend her money.

That Marlyn has actually been raped appears to be the case considering that she is suffering from a sexually transmitted disease. The absence of a laceration on her hymen does not negate rape. A torn hymen is not an essential element of rape, not